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| | | Filing Date | December 6, 2000 |
| | | First Named Inventor | M. Scott Reichardt |
| | | Art Unit | 2623 |
| | | Examiner Name | Son P. Huynh |
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ENCLOSURES (Check all that apply)

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Remarks

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| Firm Name | Ropes & Gray LLP | | |
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PATENTS
UV-174

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : M. Scott Reichardt et al.

Application No. : 09/731,115 Confirmation No. : 9203

Filed : December 6, 2000

For : SYSTEMS AND METHODS FOR COORDINATING
INTERACTIVE AND PASSIVE ADVERTISEMENT
AND MERCHANDISING OPPORTUNITIES

Art Unit : 2623

Examiner : Son P. Huynh

New York, NY 10036
September 23, 2008

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REPLY BRIEF

Sir:

Pursuant to 37 C.F.R. § 41.41(a), appellants are filing this Reply Brief in reply to the Examiner's Answer dated July 24, 2008 (hereinafter "the Examiner's Answer"), and in support of their appeal from the rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 in the final Office Action dated March 1, 2007. Appellants previously filed an Appeal Brief on April 16, 2008 and an Amended Appeal Brief on May 14, 2008 (hereinafter "Appeal Brief") in connection with this case.

REMARKS

I. Introduction

Appellants maintain the position that claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 of the present application are patentable over Alexander et al. U.S. Patent No. 6,177,931 (hereinafter "Alexander"). Appellants submit that the Examiner's Answer is insufficient as a matter of law to uphold the anticipation rejection for at least the reasons set forth in appellants' Appeal Brief. Appellants have filed this Reply Brief to address comments in the July 24, 2008 Examiner's Answer and to further demonstrate the patentability of pending claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80.

II. Summary of the Examiner's Answer

The Examiner's Answer maintains the 35 U.S.C. § 102(e) rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 from the March 1, 2007 final Office Action and restates the same grounds of rejection from that Office Action.

The Examiner's Answer also provides a "Response to Arguments" section that attempts to rebut some of the arguments presented in appellants' Appeal Brief.

III. Summary of the Appellants' Reply

Appellants' Appeal Brief fully addresses the grounds of rejection stated in the March 1, 2007 final Office Action.

This Reply Brief addresses the Examiner's comments on appellants' arguments contained in the Appeal Brief. Appellants submit that the Board should find the rejections of

claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 to be in error and should reverse the Examiner.

IV. Appellants' Reply to the Examiner's Answer

Appellants submit that the Examiner's Answer is insufficient to uphold the 35 U.S.C. § 102(e) rejections of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 at least because the prior art reference cited in the rejections still fails to show or reasonably suggest all of the claimed features recited in independent claims 1, 18, 29, 46, 57, and 74. In the "Response to Arguments" section of the Examiner's Answer, the Examiner makes several contentions about what the prior art purportedly shows or suggests.

Appellants will address each of the Examiner's contentions below.

A. Claims 1, 3-8, 29, 31-36, 57, and 59-64

Appellants' independent claims 1, 29, and 57 are directed to a method and systems for accessing a passive program guide or barker channel and interactive content from an interactive application. A branded selectable option having a product brand logo of a provider (e.g., TV Guide) is provided in a first interactive application display. In response to a user selecting the branded selectable option, a barker channel or passive program guide and interactive content (e.g., a user-selectable alert icon overlaid on the barker channel or passive program guide) are provided in a second display that replaces the first display. In this way, a user may link to a special passive video product containing interactive content from an interactive application display.

1. The Examiner's Interpretation
of Appellants' Claimed Barker
Channel is Unreasonably Broad

In the Examiner's Answer, the Examiner maintains the contention that appellants' claimed "barker channel" includes any video clip or advertisement of a program that is displayed in a PIP window or advertisement window (i.e., Alexander's PIP Window 12 or Ad Windows 14 and 16) and is not necessarily a dedicated promotional television channel (Examiner's Answer, page 13). In support of this contention, the Examiner cites Gordon et al. U.S. Patent No. 6,754,905 ("Gordon"), Wikipedia, and an [ITVdictionary.com](http://www.itvdictionary.com) definition (Examiner's Answer, page 12).

However, Gordon merely refers to a "barker video" and not to a "barker channel." As such, appellants respectfully submit that, although Gordon shows a barker video being placed in a PIP window, Gordon still fails to show that a barker channel is "not necessarily a dedicated promotional television channel," as the Examiner contends on page 12 of the Examiner's Answer.

The Examiner also cites Wikipedia which states that "the TV Guide Channel can also be considered somewhat of a barker channel" (http://en.wikipedia.org/wiki/Barker_channel, accessed: September 8, 2008). Appellants agree that the TV Guide Channel can show PIP windows with videos. However, Wikipedia does not say the TV Guide Channel is a true barker channel, but rather defines the TV Guide Channel as somewhat of a barker channel. Appellants respectfully submit that the TV Guide channel is not a true barker channel, as Wikipedia admits, because it fails in being a dedicated promotional television channel. Accordingly, Wikipedia also fails to support the Examiner's contention that a barker channel is "not necessarily a dedicated promotional television channel."

The Examiner lastly points to ITVdictionary.com which defines a barker channel as "a TV channel used to list or promote programs on other channels" (http://www.itvdictionary.com/definitions/barker_channel_definition.html, accessed: September 8, 2008). Once again, this definition does not show that a barker channel is not a dedicated promotional television channel, and rather only states the commonly-known trait of a barker channel listing or promoting programs that are on other channels.

Accordingly, appellants respectfully submit that Gordon, Wikipedia, and iTVDictionary.com fail to show or suggest that a "barker channel" may include any video clip or advertisement of a program that is displayed in a PIP window or advertisement window (i.e., Alexander's PIP Window 12 or Ad Windows 14), as the Examiner contends. Rather, equating Alexander's PIP Window 12 or Ad Windows 14 with a barker channel is not only inconsistent with the term "barker channel" as widely understood by those skilled in the art, but is also inconsistent with the express definition provided in appellants' specification. For example, appellants' specification describes that barker channels are "promotional channels that display full screen promotions" (appellants' specification, page 2, lines 27-29).

2. Even If the Content Shown in Alexander's PIP Window or Ad Windows Could Be Considered a Barker Channel, It Would Still Not Replace a First Interactive Display

In the Examiner's Answer, the Examiner maintains the contention that Alexander shows that a first interactive application display screen, containing a branded selectable option, is replaced with a second display screen that contains the passive program guide or barker channel and interactive

content, as required by appellants' independent claims 1, 29, and 57. The Examiner goes on to state that the first interactive display of appellants' claims is interpreted to be Alexander's entire display screen "with interactive icons/windows before a particular television program or particular icon/window is highlighted or selected." Then, the second display that replaces the first display is interpreted to be the same, entire display screen of Alexander after the user has selected a particular television program or particular icon or window and additional information or content is displayed (Examiner's Answer, page 15).

Appellants submit that the notion that a first display is replaced by a second display when an area of the first display (e.g., a PIP window) is filled with content is unreasonable. Appellants' claims 1, 29, and 57 clearly specify that the first interactive application display (which the Examiner contends is shown by Alexander's entire FIG. 5 display screen) is replaced by a second display containing the passive program guide or barker channel and interactive content. As stated in appellants' Appeal Brief, if the Examiner considers Alexander's entire FIG. 5 display screen as the first interactive application display, then this entire display must be replaced by the passive program guide or barker channel and interactive content. This is the only reasonable reading of independent claims 1, 29, and 57.

For at least the foregoing reasons, as well as the reasons set forth in appellants' Appeal Brief, appellants submit that the Board should find the 35 U.S.C. § 102(e) rejection of claims 1, 29, and 57, and any claims depending therefrom, to be in error and should reverse the Examiner.

B. Claims 18-24, 46-52, and 74-80

Appellants' independent claims 18, 46, and 74 are

directed to systems and a method for providing advertisements within an interactive application. An advertisement associated with a brand is inserted into branded passive programming and provided to user equipment. An alert icon, which is overlaid on the currently displayed branded passive programming, is displayed on the user equipment to indicate the availability of additional information associated with the currently-displayed branded passive programming. A user is provided with an opportunity to select the alert icon to indicate a desire to access the additional information. In response to the user selection, an interactive display is provided on the user equipment that includes an advertisement associated with the brand of the currently-displayed branded passive programming.

In the Examiner's Answer, the Examiner maintains the contention that appellants' claimed feature of "providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment" is shown by column 32, line 61 through column 33, line 8 of Alexander (Examiner's Answer, page 16). This portion of Alexander, however, describes automatically tuning a user to a particular advertising channel during the telecast of a television program. The television then automatically tunes back to the viewer's chosen television program after the advertisement is finished. According to the Examiner, this feature meets appellants' claimed branded passive programming feature. Appellants respectfully disagree and submit that the Examiner's interpretation of appellants' claim language is unreasonable.

Alexander merely states that a "change channel command" may be inserted into the Vertical Blanking Interface (VBI) when an advertisement is telecast, causing the television to tune to a particular channel (Alexander, col.

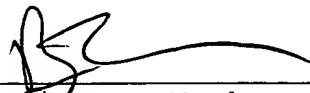
33, lines 1-8). However, appellants' independent claims 18, 46, and 74 each recite providing "branded passive programming with an advertisement inserted into the passive programming" to the user equipment. This description of branded passive programming is consistent with the commonly understood meaning of branded programming, which generally requires programming with an advertisement actually inserted into the programming video source. Therefore, inserting Alexander's "channel change command" into a VBI is accordingly not an instance of program branding. A channel change command being inserted into a VBI is certainly different than an actual advertisement being inserted into programming.

For at least the foregoing reasons, as well as the reasons set forth in appellants' Appeal Brief, appellants submit that the Board should find the 35 U.S.C. § 102(e) rejection of claims 18, 46, and 74, and any claims depending therefrom, to be in error and should reverse the Examiner.

V. Conclusion

For at least the reasons set forth above, appellants respectfully submit that claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 are in condition for allowance. The Examiner's rejections of these claims should be reversed.

Respectfully submitted,



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